

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of)

WT Docket No. 08-165

Petition for Declaratory Ruling to Clarify)
Provisions of Section 332(c)(7)(B) to Ensure)
Timely Siting Review and to Preempt under)
Section 253 State and Local Ordinances that)
Classify All Wireless Siting Proposals as)
Requiring a Variance)
_____)

COMMENTS OF PRINCE WILLIAM COUNTY, VIRGINIA

These Comments are filed by the Board of County Supervisors of Prince William County, Virginia ("Prince William County") to urge the Commission to deny the Petition filed by CTIA.

I. THE COUNTY OPPOSES THE 45 DAY AND 75 DAY FIXED DEADLINES
FOR ACTING ON COMPLETE APPLICATIONS

Congress clearly stated that the time frame for responding to applications for wireless facility sitings is determined by reference to the nature of the application. Section 332(c)(7)(B)(ii) provides that local governments act on requests "within a reasonable time period, taking into account the nature of the request." Therefore, the FCC would be acting outside its authority by mandating a fixed time period and imposing a remedy for violating that mandate, where Congress clearly intended fluidity.

The current standard of "reasonable time" is required to meet the wide variety of circumstances that face a locality when addressing land use impacts of telecommunications facilities. Because of the local nature of each application it depends on the facts of a specific case on whether more or less time will be required to properly consider how to best meet a localities telecommunications needs under federal law while carefully addressing any legitimate land use concerns that may arise in a particular proposal that may have impacts on historical, natural, or other special resources of a particular community.

To assist the Commission in its evaluation, below are details specific to the wireless facilities siting process and experiences in Prince William County.

A. LEGAL REQUIREMENTS FOR FACILITY SITING

State and local law in Prince William County, Virginia requires certain notice and public hearings to ensure that the rights of the applicant and the public are preserved. Section 15.2-2204 VA Code Ann. requires Prince William County, Virginia to provide notice of public hearings before its Planning Commission and its Board of County Supervisors once a week for two successive weeks. In typical land use matters under these requirements, the Board acts upon the requested submission within six to twelve months on the completed applications, unless an applicant requests that action be deferred on such application

Prince William County addresses the siting of wireless facilities in both its Comprehensive Plan and in its Zoning Ordinance.

The County is required by state law, Section 15.2-2223 of the Virginia Code, to adopt a comprehensive plan. The County's Comprehensive Plan is a general guide to the location, character, and extent of proposed or anticipated land use, including public facilities. It provides guidance for land use development decisions made by the County's Planning Commission and the County's governing body, the Board of County Supervisors. The County's Comprehensive Plan has a separate chapter outlining goals, policies, and action strategies for Telecommunications, located at pages Tele-1 thru Tele-13 of the Comprehensive Plan ("Telecommunications Plan").

The Telecommunications Plan provides a framework for evaluating telecommunications proposals under the County's development review process, including Special Use Permits and Public Facility Reviews, pursuant to Virginia Code Section 15.2-2232. The intent of the Telecommunications Plan is to ensure the adequate provision of telecommunications infrastructure in the County that will support economic growth and public safety, and provide other essential communications services for the County in a manner that is compatible with adjacent and nearby land uses. The Telecommunications Plan acknowledges both the need for a broad range of communications services and the need to assure compatibility with adjacent and nearby land uses. This appears to be the very essence of the local concerns that were given deference in the federal Telecommunications Act of 1996. The Telecommunications Policy encourages the use of existing structures, such as towers, water tanks, utility poles, building rooftops and other tall structures, but acknowledges that new towers may be required and sets forth a hierarchy of preference criteria to consider where any such new towers should be located.

The applicable provisions governing the construction of new telecommunications facilities are set forth in Section 32-240.01 through 32-240.20 of the Prince William County Zoning Ordinance. Under the County's Zoning Ordinance, some facilities require only a Public Facilities Review while other proposed facilities require a Special Use Permit. For less intense uses, a Public Facilities Review can be made by the County's Planning Director in administrative fashion, unless called up for further review by the County's Planning Commission. These administrative reviews are typically

completed within thirty (30) days after a complete application has been submitted by a wireless provider.

In those more complex cases where review by the Planning Commission is required, reviews are typically completed within sixty (60) days after a complete application has been submitted by a wireless provider.

Notwithstanding the County's typical ability to process these Public Facility Review applications for collocation quickly, the County opposes the petition to set a 45 day deadline for applications involving collocation, because of those special situations that require more than 45 days to process, and the clear Congressional language acknowledging those situations in its direction to act within a reasonable time period, taking into account the nature of the request.

In general, a Public Facilities Review is not sufficient, and a Special Use Permit is required, when a new tower of over 50 feet is proposed for construction in a residential district, or when a new tower of over 199 feet is proposed in a nonresidential district.

B. NUMBER OF APPLICATIONS AND OUTCOMES FOR NEW TOWERS

Since September 1, 2006, the County has received eight applications for new towers within the County. Five of those applications have been approved and three are still pending. The five approved applications, took from 30 to 173 days to be reviewed and approved. Of the three remaining pending applications, two were just submitted in June of 2008 and are being evaluated to properly balance the need for such facilities with the unique cultural and other important community characteristics around such facilities.

The application for the final remaining facility was accepted by the County in August of 2007. The circumstances around that application highlight the practical need to maintain the current legislative standard and problems with the arbitrary standards proposed by CTIA. The sensitive nature of this request to place a 120 foot tower in the viewsheds of not one, but two historic civil war battlefields¹, required more time to process this application. The Bristow Battlefield has been determined eligible for listing on the National Register of Historic Places. The proposal to place the 120 foot tower within a half mile of this cultural resource necessitated the applicant to initiate Section 106 review of the National Historic Preservation Act of 1966, as amended ("Section 106 Review").

The Section 106 Review was already being processed by the Federal Communications Commission when the County accepted the Special Use Permit application for this site. To expedite the overall time to process the proposal, the County allowed the Section 106 Review to run concurrently with the County, rather than consecutively.²

¹ Kettle Run Battlefield and Bristow Battlefield.

² Moreover, whenever possible, the County does not require its own cultural review of an SUP, when an applicant resolves cultural issues through a Section 106 Review.

It was the County's understanding that the Section 106 Review conducted by the FCC was not completed until June of 2008, ten months after the County accepted the Special Use Permit application. During the Section 106 Review the American Battlefield Protection Program of the National Park Service, and Civil War Preservation Trust, as well as the County submitted comments on how the proposed tower would impact the battlefields. As a result of that Section 106 Review, the height of the proposed tower was reduced from one hundred twenty (120) feet to seventy (70) feet to eliminate detrimental viewshed impacts to the two battlefields and, to some extent, the surrounding residential areas. Another relevant concern about this proposal was its proximity to the nearby Manassas Airport. This application was recommended for approval by the County's Planning Commission on September 17, 2008 and is now scheduled for the required public hearing before the Board of County Supervisors on October 21, 2008.

As detailed above, the County's timetables for approving these new telecommunications land uses within the County are typically comparable, or quicker, than the time needed to process applications for other new land uses within the County.

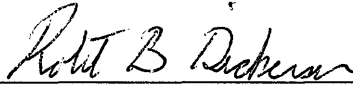
C. BAD POLICY

The CTIA petition for strict deadlines ignores the clear language adopted by Congress that allows localities to address the sometimes complex cases that arise in the land use arena. Prince William County, like other jurisdictions, has continued to allow for the expansion of telecommunications facilities in circumstances that make good land use sense. There has been no crisis on this issue. Indeed the process seems to be working as contemplated by Congress. Although Prince William will continue to process applications in a timely fashion, localities must have the flexibility to take more time when complex factors, including legitimate issues about historical, cultural and other important community concerns, must be balanced against the need for enhanced communications.

II. CONCLUSION

The Commission does not have the authority to issue the declaratory ruling requested by CTIA because it would be contrary to Congress's intentions. Further, the current process for addressing land use applications properly balances the telecommunications needs of the applicant and our community with the legitimate land use concerns of our community. The system works well and there is no evidence to suggest that the Commission should grant a special waiver of state and local law to the wireless industry. Any perceived difficulties experienced by wireless providers can and are adequately addressed through the electoral process in each individual community and the courts. Federal agency intrusion is neither warranted nor authorized.

Respectfully submitted,
BOARD OF COUNTY SUPERVISORS OF
PRINCE WILLIAM COUNTY, VIRGINIA



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